
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 7 Case
BIRDELL CHANDLER)	
FREEMAN STEWART)	Number <u>91-42252</u>
)	
<i>Debtor</i>)	

MEMORANDUM AND ORDER ON DEBTOR'S MOTION TO RECONVERT

The original petition in this case was filed under Chapter 13 of the Bankruptcy Code on November 4, 1991. By order entered November 19, 1993, the Honorable John S. Dalis converted this case to one under Chapter 7 of the Code, based upon Debtor's material default in payments of the monthly mortgage obligations on her personal residence, placing her home, with substantial equity, in imminent danger of being foreclosed to the detriment of creditors and the Debtor herself. On February 28, 1994, Debtor filed a Motion seeking to reconvert her case back to a case under Chapter 13. A hearing was held on the motion on March 30, 1994. Based upon the evidence adduced at the hearing, the record in the file and applicable authorities, I make the following Findings of Fact and

Conclusions of Law.

FINDINGS OF FACT

At the time Debtor filed her original petition under Chapter 13, she owned at least a one-half undivided interest in a residence located at 205 Quarterman Drive, Savannah, Georgia. Based upon an appraisal of the residence, it appears that the home is worth at least \$105,400.00, and that Debtor's one-half equity interest is worth approximately \$17,500.00. In late February 1994, after Judge Dalis had converted Debtor's case to Chapter 7, Debtor executed a sales agreement with a third party for the sale of her home. The agreement requires the third party only to cure the outstanding arrearage owed to the first mortgageholder and further provides for the purchaser to assume the mortgage obligation of approximately \$70,000.00. Thus, the total consideration given Debtor in the transaction was approximately \$77,000.00. Debtor remains in possession of the real estate, apparently as a tenant of the party to whom she sold the property.

Debtor asserts in support of her motion to reconvert that the defaults which induced Judge Dalis to convert her case were occasioned by illness and disability which she suffered. She now contends that her health is improved, that she has regular income and that the transfer of the home has relieved her of heavy financial obligations which make it more feasible for her to continue under Chapter 13.

CONCLUSIONS OF LAW

Section 706(a) of the Bankruptcy Code governs conversion of case under Chapter 7 to a one under Chapter 13. It provides as follows:

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1307, or 1208 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

11 U.S.C. § 706(a). By its terms, Section 706 gives the debtor the absolute right to convert a Chapter 7 case to a Chapter 13 at any time, unless it has previously been converted under Section 1307.

It is clear in this case that Debtor no longer possesses the absolute right to convert her Chapter 7 case back to one under Chapter 13, Judge Dalis having converted her original Chapter 13 case to Chapter 7 pursuant to section 1307. The question, then, is whether Debtor maintains any right to reconvert her case after having exhausted her absolute right under section 706(a). At least two lines of authority have developed with regard to this issue. One line construes section 706 and its legislative history as imposing an absolute

prohibition on a second conversion,¹ while another permits a second conversion, after notice and a hearing, if, in the bankruptcy court's discretion, the debtor's circumstances warrant it.²

Because there is no controlling authority in this Circuit and because under even the more flexible approach I find that the Motion must be denied, I will not endeavor, in this case, to consider whether to adopt a *pro se* prohibition on reconversion. Under the more flexible standard, the circumstances surrounding a debtor's motion to reconvert, as well as "what most inures to the benefit of all parties in interest³, must be considered in determining whether, in the court's discretion, a debtor should be permitted to reconvert his or her case back to Chapter 13. However, conversion is not available to a chapter under which the debtor is not eligible to seek relief. 11 U.S.C. §706(d). Applying this standard to the instant case, I conclude that Debtor's circumstances do not permit converting her Chapter 7 bankruptcy case back to Chapter 13. Debtor clearly acted improperly in entering into a sales contract for the sale of her personal residence while in a Chapter 7 case and without leave of court. The fact that Debtor transferred the residence, which has been

¹ See e.g., In re Vitti, 132 B.R. 229 (Bankr. D.Conn. 1991); In re Bryan, 109 B.R. 534 (Bankr. D.D.C. 1990); In re Hanna, 100 B.R. 591 (Bankr. M.D.Fla. 1989); In re Carter, 84 B.R. 744 (D.Kan. 1988); In re Richardson, 43 B.R. 636 (Bankr. M.D. Fla. 1984); In re Ghosh, 38 B.R. 600 (Bankr. E.D.N.Y. 1984).

² See e.g., In re Masterson, 141 B.R. 84 (Bankr. E.D.Pa. 1992); In re Johnson, 116 B.R. 224 (Bankr. D.Idaho 1990); In re Trevino, 78 B.R. 29 (Bankr. M.D.Pa. 1987); In re Walker, 77 B.R. 803 (Bankr. D.Nev. 1987); In re Hollar, 70 B.R. 337 (Bankr. E.D.Tenn. 1987); In re Sensibaugh, 9 B.R. 45 (Bankr. E.D.Va. 1981).

³ In re Sensibaugh, 9 B.R. at 46.

valued at \$105,400.00, for total consideration of only \$77,000.00 demonstrates that the transfer to the third party was made for far less than fair market value. Even clearer is the fact that Debtor's transaction conveying her real estate occurred at a time when she was under the protection of the Bankruptcy Code, at a time when the Chapter 7 Trustee was vested with all of her interest in this and all of her other property, and was done without any notice, hearing or approval of the Court or of the Trustee.

While no documents concerning the transaction were introduced at trial, from the presentation of counsel it is clear that this transaction is less than an arm's length transaction, the effect of which is to place the home beyond the reach of creditors without fair consideration to Debtor's Chapter 7 estate. At the same time, the Debtor enjoys a major, if not the principle, advantage of home ownership, possession. The record is not sufficiently complete to reach a conclusion as to whether the transaction transferring Debtor's ownership interest in her home is a sham transaction. Nevertheless, there is little question that a debtor dealing with property of the estate in this manner has acted in violation of 11 U.S.C. Sections 363, 541, 548, and perhaps others.

It is clear from the record that Debtor would not be able to satisfy the provisions of section 1325(a), which, in part, provides:

(a) Except as provided in subsection (b), the court shall confirm a plan if--

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title . . .

(3) the plan has been proposed in good faith and not by any means forbidden by law . . .

11 U.S.C. § 1325(a). Debtor's conduct in transferring the interest in her home is a clear manifestation of bad faith. Debtor is thus ineligible to proceed further under Chapter 13, and her Motion to Reconvert must therefore be denied. The case shall remain pending as a Chapter 7 case, and the Trustee is ordered and directed to immediately liquidate Debtor's estate pursuant to the provisions of Chapter 7.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1994.